IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 17 of 1991
with
Company Petition No. 39 of 1991
with
Company Petitions No. 43 of 1991, 44 of 1991, 65 of 1991, 66 of 1991, 67 of 1991, 69 of 1991, 104 of 1991, 51 of 1992, 37 of 1991, 38 of 1991, 69 of 1990, 95 of 1990,154 of 1990, 6 of 1991 and 9 of 1991
WITH
Company Application No. 242 of 1990
In
Company Petition No. 69 of 1990
With
Company Application No. 243 of 1990
In
Company Petition No. 69 of 1990.

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDUSTRIAL GASKETS & TEFLON PRODUCTS - Petitioner(s)
Versus
S L M MANEKLAL IND. LTD - Respondent(s)

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Appearance :
MR RC JANI for Petitioner(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 27/09/2006

ORAL COMMON JUDGMENT

All these petitions are filed by respective petitioning creditors for an appropriate order of winding up of respondent Company, i.e., S.L.M. Industries Ltd., under the provisions of The Companies Act, 1956. It is required to be noted that all these Company Petitions and Company Applications are of the year 1990 and 1991 and one Company Petition is of 1992. All these company petitions came up for hearing before the learned Single Judge of this Court, and, by order dated 12th September 2002, the learned Single Judge of this Court allowed all the Company Petitions and passed a common order by observing that the respondent Company, M/s. SLM Maneklal Industries Ltd., a T. Maneklal Division which is renamed as SLM Industries Ltd., be wound up. It appears that, as the Company

Court, taking into consideration the Board's Opinion formed under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, straightway allowed the Company Petitions and directed winding up of the respondent Company, the respondent Company preferred O.J. Appeal No. 35 of 2002 and other cognate Appeals challenging the order passed by the learned Single Judge dated 12th September 2002 on the ground that there was non-compliance of Rule 96 of The Companies (Court) Rules, 1959, inasmuch as before passing an order of winding up of the Company, the petition is required to be admitted and the admission of the petition is required to be advertised in the local newspapers with a date for hearing, and accordingly accepting the contention on behalf of the respondent Company, the Division Bench of this Court, vide its Judgment and order dated 27th February 2006, while allowing and disposing of all the aforesaid

appeals, passed the following order;

> *"17. In our opinion, the learned single Judge, though was absolutely justified in observing that it had jurisdiction to entertain the petitions and pass an order of winding up, went a little wrong in passing the final winding up order without admitting the petitions. The direction of winding up, for the reasons stated above, deserves to and is accordingly quashed. Instead, we direct admission of all the Company Petitions and further direct that the date of hearing be advertised and the matters may be heard by the learned single Judge after giving due opportunity to the parties.*
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> *As the petitions are of the year 1989, we hereby direct the Registry to place all these Company Petitions before the*

> *learned Company Judge on 17th March, 2006. The learned Company Judge shall proceed in accordance with the procedure provided in Rule-96 of the Companies (Court) Rules, 1959. The appeals to the extent indicated above are allowed. No orders as to costs."*

2. It appears from the record that, all these Company Petitions were placed before the learned Single Judge, i.e., Company Court on 20th July 2006. Thereafter, the following order came to be passed;

> *"It appears that as per the order passed by the Division Bench of this Court [Coram: R.S. Garg & Bankim N. Mehta, J.J.] in O.J. Appeal No. 35/02, the matters are placed before this Court. It also appears that as per the order of the Division Bench, more particularly at para 17, the Court directed the admission of all the*

Company Petitions and further directed that the hearing be advertised and the matters may be heard by the learned Single Judge after giving due opportunity of hearing to the parties.

There is no record placed by the office as to whether any advertisement was given pursuant to the order passed by the Division Bench of admission of the Company Petitions and fixing the hearing. Hence, office to place the report if the advertisement has already been published. If not published, the necessary advertisement as per the order of the Division Bench be issued for fixing the hearing on 24th August, 2006."

3. Thereafter, all these petitions and applications were placed before this Court and they were called out on 15th September 2006 twice,

however none of the advocates appearing on behalf of petitioning creditors remained present. Shri Manish Bhatt, learned advocate appearing for the respondent Company had submitted that the respondent Company is ready and willing to pay 25% of the principal amount due and payable as full and final settlement and assured that the learned advocates appearing on behalf of the petitioning creditors will be given a copy of the communication from the respondent company showing their desire to pay 25% of the principal amount, pursuant to which all the Company Petitions were adjourned by this Court by passing the following order;

> *"All these petitions are called out twice today. None of the learned advocates appearing on behalf of the petitioning creditors has chosen to remain present. Shri Manish Bhatt, learned advocate appearing on*

behalf of the respondent company has submitted that the respondent company is ready and willing to pay 25% of the principal amount due and payable as full and final settlement. He has submitted that the learned advocates appearing on behalf of the petitioning creditors will be given a copy of the communication from the respondent company showing their desire to pay 25% of the principal amount. Let Shri Bhatt, learned advocate appearing for the respondent company supply copy of the correspondence with the respondent company to each of the learned advocates appearing on behalf of respective petitioning creditors by 18th September 2006. S.O. To 25th September 2006. If on that date the learned advocates appearing on behalf of petitioning creditors are absent, appropriate order, dismissing the present Company Petitions for non-prosecution, will be passed.

> *2. It is also required to be noted that, vide judgment and order dated 27.2.2006 in OJ Appeal No. 35 of 2002 and other cognate appeals the Division Bench admitted all these company petitions and ordered for advertisement informing the date of final hearing. However, it appears that, till date advertisements are not given in the local newspapers informing the date of Final Hearing. Thus, there is non-compliance of the order passed by the Division Bench also. To be placed in Board No.I on 25th September 2006."*

4. Today, When all these Company Petitions and Applications were called out in the first session, learned advocates appearing on behalf of the petitioning creditors were absent, and therefore all the petitions were kept back.

Again, all these petitions and applications were called out in the second session, and the learned advocates appearing on behalf of the respective petitioning creditors are absent. These petitions and applications are of the years 1990, 1991 and 1992. As stated above, by judgment and order passed by the Division Bench of this Court dated 27th February 2006 in O.J. Appeal No. 35 of 2002 and other cognate appeals the Division Bench directed admission of all the Company Petitions; that hearing be advertised; and that all the matters be decided by learned Single Judge after giving due opportunity of hearing to the parties. Nothing is on record to show that any effort is made by any of the petitioners to see that hearing of the present petitions is advertised. No advertisement is given by the petitioners for hearing of the present Company Petitions as required under Rule 96 of The Companies (Court) Rules, 1959. Thus, there is non-compliance of

Rule 96 of the said Rules. There is also non-compliance of the order passed by the Division Bench with regard to release of advertisement of admission of the present Company Petitions. From the aforesaid, it appears that none of the petitioners is interested in proceeding further with the present Company Petitions. At the cost of repetition, it is observed that all these Company Petitions/Applications are of the years 1990, 1991 and 1992, and even in the year 2006, even admission of all these petitions are not advertised. 16 years have passed after filing of the present Company Petitions. Even there is no response to the communication sent by the learned advocate appearing on behalf of the respondent Company as well as the respondent Company to the effect that the respondent Company is ready and willing to pay 25 per cent of the principal amount due and payable in full and final settlement. It is also required to be noted

that in some of the Company Petitions, which were admitted along with the present Company Petitions, the learned advocates appearing for the petitioners therein had also agreed to accept 25 per cent of the principal amount due and payable to them as full and final settlement, and the respondent Company had agreed to pay the said amount within the period of 60 days thereof. However, so far as the present company petitions are concerned, neither there is any response nor the learned advocates appearing on behalf of the respective petitioners are present. As stated hereinabove, it appears that the petitioners are not interested in prosecuting with these Company Petitions. Hence, all these Company Petitions and the Company Applications are dismissed. No costs. In view of disposal of Company Petition No. 69 of 1990, no orders on Company Applications No. 242 of 1990 and 243 of 1990 and they shall stand disposed of accordingly.

[M.R. Shah, J.]

RMR.